

# **BEPS , ABGSL**

**DFA**

April 08, 2022

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## OECD's Base Erosion and Profit Shifting Project

refers to tax planning strategies used MNC s that exploit gaps and mismatches in tax rules to avoid paying tax

- to artificially shift profits to low or no-tax locations where there is
- little or no economic activity
- eroding tax bases through deductible payments such as interest or royalties
- thus affecting competition, distorting investment decisions and reducing overall trust in the tax system

# BASE EROSION AND PROFIT SHIFTING (BEPS)

- ◆ BEPS = indicate tax avoidance strategies which MNC employ for reducing their tax bases.
- ◆ MNCs are developing sophisticated & refined tax planning practices to avoid tax by shifting their incomes / profits to other countries, especially to tax havens. Such practices eroded the tax base
- ◆ For government, the tax base is the income or profit earned by companies.
- ◆ Tax is levied as a percentage on this income / profit.
- ◆ Once this income / profit shifts to another country or tax haven(s), the tax base is eroded, and no tax gets paid by the company to the country that generates the revenue.
- ◆ There is a growing concern with respect to the serious losses of tax revenues due to BEPS.
- ◆ These hurdles resulted = launch of BEPS project by the Organisation for Economic Co-operation and Development (OECD).
- ◆ OECD has designed a **15-point action plan (AP)** for tackling this problem of shifting profits.
- ◆ As of 4 November 2021, 137 countries and jurisdictions joined a new 2-pillar plan to reform international taxation rules and ensure that MNE s pay a fair share of tax wherever they operate.

# BEPS-OECD project

- ◆ **BEPS practices cost countries 100-240 billion USD in lost revenue annually, =** equivalent to 4-10% of the global corporate income tax revenue.
- ◆ All concerned nations could join G-20 and the OECD member countries on an equal footing to implement the BEPS package
- ◆ Working together in the OECD/G20 Inclusive Framework on BEPS, **141 countries and jurisdictions are implementing 15 Actions** to tackle:
  - tax avoidance,
  - improve the coherence of international tax rules,
  - ensure a more transparent tax environment and
  - address the tax challenges arising from the digitalisation of the economy.
- ◆ **1. Strict environment & improved focus on involvement from businesses:** Business information would be disclosed and accessible through automatic information exchanges
- ◆ **2. Reporting requirements: New reporting requirements for large companies** would make a detailed Country-by-Country (CBC) financial and tax information visible, to various eyes , not just to the tax authorities.
- ◆ Amount of data disclosed would be much higher than what companies are reporting presently

# BEPS and India:

- ◆ India = part of the forum in devising action plans, & part of various working groups, committees and task forces of OECD
- ◆ **No of proposals in the Finance Act**, which are influenced by BEPS recommendations
- ◆ Master File and CbC (Country-by-Country) Reporting
- ◆ Equalization levy requiring withholding on the gross basis for payments for certain specified digital services
- ◆ **Place of Effective Management (PoEM):**
- ◆ PoEM = place where the key management and commercial decisions that are necessary for the conduct of business of an entity as a whole are, in substance made
- ◆ CBDT issued POEM guidelines by way of Circular No. 6 of 2017 dated 24th January, 2017 for the purpose determining POEM.
- ◆ The concept of POEM applicable from FY 2016-17 i.e., AY 2017-18 onwards.
- ◆ POEM guidelines shall not apply to companies having a turnover or gross receipts of Rs. Fifty crores or less in a financial year. (Circular 8/2017 of CBDT).
- ◆ If any foreign company has PoEM in India, lead to - foreign company would be termed as a resident u/s 6(3) of Income Tax Act, 1961.
- ◆ ₹₹ Entire global income of such foreign company - subjected to tax in India as per Sec 5(1) of the Act

# PoEM Rules

- ◆ Determination of PoEM -be done each year as residency also analysed on an annual basis
- ◆ While determining the PoEM, the concept of substance over form should be used.
- ◆ Though an entity has more than one place of management, it can have only one place of effective management at a given point of time.
- ◆ The process of determination of PoEM would be primarily based = as to whether or not the company is engaged in active business outside India (ABOI).
- ◆ **1. OECD - Developing Countries and the OECD/G20 Inclusive Framework on BEPS: OECD Report for G20 Finance Ministers and Central Bank Governors, October 2021,**
- ◆ takes stock of progress made by developing countries through their participation in OECD/G20 Inclusive Framework on BEPS.
- ◆ **2. Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two) – Dec 2021**
- ◆ Global Anti-Base Erosion Rules (GloBE) - key component of this plan - ensure large MNE s pay minimum level of tax on income arising in each of the jurisdictions where they operate.
- ◆ GloBE Rules provide for a co-ordinated system of taxation that imposes a top-up tax on profits arising in a jurisdiction whenever the effective tax rate, determined on a jurisdictional basis, is below the minimum rate.

# ABG Shipyard Case

- ◆ ABG Shipyard Limited (ABGSL) was incorporated on March 15, 1985, with its registered office in Gujarat's Ahmedabad.
- ◆ Flagship company of the ABG Group and is engaged in the business of shipbuilding and ship repair.
- ◆ ABG Group, promoted by Rishi Agarwal, has been a major player. Their ship-yards are located at Dahej and Surat in Gujarat.
- ◆ ABGSL could build vessels up to 18,000 deadweight tonnage (DWT) at Surat Shipyard and 1,20,000 deadweight tonnage (DWT) at Dahej Shipyard.
- ◆ SBI stated - ABG Shipyard, which was incorporated on 15 March 1985, has been under banking arrangements since 2001.
- ◆ *"Financed under consortium arrangement over a two dozen lenders. The leader in Consortium was ICICI Bank. Due to poor performance, the account became NPA on 30/11/2013. Several efforts were made to revive the company operations but could not succeed,"* **statement from SBI**

# Case background

- ◆ The company's loan account was restructured under the CDR mechanism in March 2014 by all lenders, said SBI, adding that the shipping industry was going through a downturn, one of the worst ever seen, and the operations of the company could not revive.
- ◆ As per the SBI, after the restructuring failed, the ABG Shipyard's account was classified as NPA in July 2016, with backdated effect from 30th Nov. 2013. E&Y was appointed as forensic auditor by lenders during April 2018 and they submitted their report on January 19.
- ◆ **How fraud is declared by banks:**
- ◆ A fraud is declared basis the Forensic Audit report findings that are discussed thoroughly in joint lenders meetings.
- ◆ Typically, when fraud is declared, an initial complaint is preferred with the CBI, and based on their enquiries further information is gathered.
- ◆ **ICICI Bank was the lead banker: SBI**
- ◆ SBI = although ICICI Bank was lead lender in the consortium and IDBI was the second lead, it was preferred that SBI being the largest PSB lender, lodges the complaint with CBI.  
"The first complaint was filed with CBI in Nov 2019.
- ◆ There was a continuous engagement between CBI and Banks and further information was getting exchanged,"

# Allegation & Report

- ◆ Fraud detected = forensic audit that EY conducted in January 2019, from April 2012 to July 2017. It found that the fraud had taken place during this period as per the FIR.
- ◆ **Allegation & Report**
- ◆ *“The fraud was conducted through diversion of funds, misappropriation, criminal breach of trust, to illegally gain at the cost of the bank’s funds.” - SBI ( in its complaint)*
- ◆ The forensic audit — based on the ledgers of One Ocean Shipping Private Ltd (OOSPL) and ABG Engineering and Construction (ABG EC) Ltd— noted that money was transferred to another company called PFS Shipping India Ltd. which adjusted receivables to ABGSL.
- ◆ Transfer entities show that in previous years ABGSL had transferred funds to OOSPL and ABG EC.
- ◆ The money borrowed from banks was used to repay loans and pay for other expenses of group companies, as well as for letters of credit.
- ◆ There are indications of properties being purchased by related or linked parties from funds provided by ABGSL.
- ◆ CBI = no delay in filing the FIR. The various complex transactions were being looked into. The investigation is on.

# Forensic Audit Report by EY

- ◆ EY = key prosecution witness in the probe against ABG Shipyard, booked by CBI for allegedly duping banks of over ₹22,482 crore,
- ◆ EY conducted a forensic audit of ABG Shipyard and submitted its report in January 2019 to a consortium of 28 banks allegedly defrauded by the Surat-based ship builder
- ◆ The agency asked SBI Mumbai to furnish a list of witnesses. The bank, in its fresh complaint in September 2020, suggested EY and the general manager of its Mumbai branch as prosecution witnesses in the case.
- ◆ Audit report will be examined and officials who conducted the audit may be quizzed by CBI. ***The audit report will also be examined to ascertain if it missed any lapses, the people said. "Depending on evidence and the role of those involved, the agency will decide who will be prosecuted and who will be made a witness,"***

In its audit report, reproduced in CBI's FIR, EY has highlighted "potential circular transactions," violations of corporate debt restructuring (CDR) offered by banks in 2014 and "potential diversion" of funds by ABG Shipyard.

# Latest Updates – IL&FS : MD arrested in Cheating case

- ◆ In 2020, MD of IL&FS Transportation Network Ltd arrested in alleged case of cheating and forgery of around Rs 100 crore, amassed on the pretext of investment and stake in company's SPV for Gurugram Rapid Metro project.
- ◆ Accused, Ramchand Karunakaran, was arrested based on FIR lodged in 2018 under IPC sections of criminal conspiracy, cheating and forgery.
- ◆ The directors of the firm allegedly duped the director of another firm, Enso Infrastructures, by offering a 15% stake in the project in lieu of investment of around Rs 170 crore.
- ◆ The complainant, Ashish Begwani of Enso Infrastructures, alleged = he was approached by officials of IL&FS, including Karunakaran, for investment in August 2010.
- ◆ “*Enso Infrastructures agreed to invest Rs 170 crore for a 15% stake in IL&FS Rail Ltd, the SPV for Gurugram Rapid Metro project. However, over a period of time, the complainant observed that the company was not profitable and funds were being misused.... funds were allegedly siphoned off through bogus bills and invoices to inflate expenses and the stake was never delivered*”, ”
- ◆ - **Additional commissioner (EOW) RK Singh.**

## IL&FS Chairman Ravi Parthasarathy arrested

- ◆ Parthasarathy, mastermind and chief architect of Rs 1 lakh crore IL&FS scam, arrested by EOW Chennai
- ◆ EOW DSP Prakash Babu confirmed = Parthasarathy has been arrested & taken into police custody for 15 days..

# AP Mahesh Cooperative Urban Bank case -2022

- ◆ Servers of Hyderabad-based AP Mahesh Co-operative Urban Bank hacked by some people and funds to the tune of nearly Rs 12 crore were allegedly fraudulently transferred to several bank accounts across the country.
- ◆ Mahesh Bank has 45 branches across four states.
- ◆ AP Mahesh Co-operative Urban Bank said funds of the bank was found to be transferred by the hackers and no amount was diverted from customers' accounts.
- ◆ Officials said = Rs 12.48 crore were transferred to several individual accounts of many banks, most of them located in other states and also in Telangana.
- ◆ "The destination banks were informed and necessary steps were immediately initiated to secure our funds. The bank's funds are insured against cyber-attack," - Bank Official
- ◆ Case was registered and Police team visited bank's main branch
- ◆ Hackers siphoned off Rs 94 crore from Pune-based Cosmos Bank, India's 2nd largest cooperative bank, by cloning thousands of credit cards in 2018.

- ◆ **Process of Fraud**
- ◆ Nigerian handlers operating from India were tasked to open bank accounts through locals in banks.
- ◆ Phishing mails were sent by an unidentified hacker to 200 staff of Mahesh bank (November 4, 10 and 16, 2021) , 2 of them clicked on links in mails,
- ◆ This allowed = remote access trojan malware to be installed.
- ◆ Then = key logger software was installed in 2 computers obtaining login credentials of two staff.
- ◆ Sniffing through bank's single network, hacker obtained access to master administrator's login details, gaining access to bank's database
- ◆ *" since all the systems in the bank are interconnected, the hackers were remotely able to access the Core banking server of the bank." - CV Anand, CP Hyderabad*